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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,709	06/19/2001	Timothy L. Timmerman SR.		4077

7590 08/16/2002

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 08/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/884,709

Applicant(s)
TIMOTHY L. TIMMERMAN, SR, ET AL.

Examiner
YVONNE M. HORTON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 19, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Jun 19, 2001 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. The claims are rejected under the judicially created doctrine of double patenting over the claims of U. S. Patent No. 6,158,184, as listed below, since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

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The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

A rigid rectangular structural panel having a plurality of attachment points, a plurality of foundation bolts, a foundation template, and a means for attaching the structural panel hold down points to the foundation bolts.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent.

The Instant Application

US Patent #6,158,184

1	1
2	1
3	1
4	1,2
6	5
7	5

In regards to claim 5, Claim 5 is rejected over US #6,158,184 in view of US #5,706,626. US #5,706,626 teaches that it is known in the art to form the rigid structure out of a metal material, column 2, line 59. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the system of US #6,158,184 out of a metal material, as taught by US #5,706,626.

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In reference to claims 8-11, claims 8-11 are rejected over US #6,158,184 in view of US #5,706,626. US #5,706,626 teaches that it is known in the art to apply a force at a certain location (182,184). This location would hereby be a load point. Although US #5,706,626 only shows these two particular points, it would have been obvious to one having ordinary skill in the art at the time the invention was made that a load could be applied at any or various points about the structure.

Drawings

3. The drawings are objected to because there are no Figures 1A,1B,2A or 2B. Also, the brief description of the drawings for figure 12 includes a description of figures 7A-C; however, there are no figures 7A-C. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "412,414" and "424,428" have both been used to designate the first and second side members. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "412,414" has been used to designate both "horizontal spacers" and "first and second side members". A proposed drawing correction or corrected drawings are required in

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reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

6. The disclosure is objected to because of the following informalities: the first paragraph of the specification must be amended to include that application serial number 09/697,030 is now abandoned. Appropriate correction is required.

7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no support in the specification for the “lateral force resisting member” of claim 3. There is also no support in the specification for the load points, linear patterns and parallel linear patterns of claims 8-11. Correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 2 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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10. Claim 2 recites the limitation "said means for securing" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 1 introduces a means for attaching; however, no means for securing has been introduced,

11. In claim 4, it is not clear how the horizontal spacing members are "coplanar" with the vertical sides. If the spacing member is horizontal and the side member is vertical, it would appear the two are perpendicular to one another, thereby being in two different planes.

Clarification and/or correction is required.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,706,626 to MUELLER. MUELLER discloses a rigid panel (100) including a plurality of holdown attachment points (132), a plurality of foundation bolts (166,172), a foundation placement template (106), and a means (134) for attaching the structural panel hold down points to the foundation bolts. Regarding claim 2, the means for attaching includes a plurality of holdowns (130). In reference to claim 3, the rigid panel is rectangularly shaped and includes two vertical side members (102a,b) connected to two or more horizontal members (104,106) to form

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an opening (unlabeled), a plurality of attachment points (132), and one or more lateral resisting members (140). Regarding claim 4, the one or more lateral resisting members (140) are horizontal spacers forming subopenings (unlabeled) wherein the subopenings are covered by panels (110a,b) at vertical joints. In reference to claim 5, the lateral force resisting member (140) is metal, column 2, line 59. Regarding claim 6, the panels (110) include a plurality of panels (110a,110b). In reference to claim 7, the panels are attached using a plurality of fasteners (124). In reference to claims 8-10, the structure includes a plurality of load points (182,184) arranged in a linear pattern at a top portion thereof.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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16. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,706,626 to MUELLER. As detailed in paragraph #13 above, MUELLER discloses the basic claimed panel except for an indication of the load points including a parallel linear pattern.

Although MUELLER does not specifically detail a parallel linear pattern of load points, he does teach the use of loads applied linearly at a top portion of the panel. It would have been obvious to one having ordinary skill in the art at the time the invention was made that a load could be applied at any or various points about the structure. Thus, it would have been obvious to one having ordinary skill in the art that the loads applied to MUELLER could be distributed throughout thereby forming a parallel linear pattern, especially if a load is applied directly thereagainst.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909.

YMH
Primary Examiner
Art Unit 3635
August 12, 2002

